ESTATE OF FRANK NELSON BUFFALOMEAT	:	Order Docketing and Dismissing Appeal
	:	
	:	Docket No. IBIA 99-101
	:	
	:	September 27, 1999

On September 15, 1999, the Board of Indian Appeals received a copy of the probate record in the Estate of Frank Nelson Buffalomeat, IP OK 244P 97, from the office of Administrative Law Judge Richard L. Reeh. Included with the record was a copy of a notice of appeal which had been filed with the Superintendent, Concho Agency, Bureau of Indian Affairs (Superintendent), by Appellant Louise White Horse Buffalomeat. The Superintendent forwarded the appeal to Judge Reeh, who in turn forwarded it to the Board.

The probate record shows that Decedent Frank Nelson Buffalomeat died intestate on January 30, 1997. Judge Reeh held a hearing to probate Decedent's trust estate on July 28, 1997, and issued an order determining Decedent's heirs on May 7, 1998. The Judge found that Decedent's heirs were his four children: Wymola, Nelson Roe, William Berk, and Wylan Buffalomeat.

A petition for rehearing with supporting documentation was timely filed by Josephine Buffalomeat, who alleged that she was Decedent's surviving spouse. The Judge gave opposing parties an opportunity to respond to Josephine's petition. No responses were received. On May 19, 1999, Judge Reeh modified his May 7, 1998, order to include Josephine as Decedent's surviving spouse. Judge Reeh's order on rehearing properly informed interested parties of the right to appeal his decision to the Board, gave the Board's correct mailing address, and notified parties of the requirement that any notice of appeal be filed within 60 days.

On July 29, 1999, Appellant signed the affidavit which constitutes her notice of appeal. In her affidavit, Appellant states that she is the natural mother of Decedent's four children. She contends that the Judge should not have considered Josephine's petition for rehearing because Josephine did not attend the July 28, 1997, probate hearing and should therefore have lost any right to Decedent's estate.

Upon examination of the probate record, the Board finds that this appeal must be dismissed for two reasons. First, the appeal is untimely. Appellant was informed that any appeal was to be filed with the Board within 60 days. See 43 C.F.R. § 4.320(a) ("Within 60 days

from the date of the decision, an appellant shall file a written notice of appeal * * * with the Board of Indian Appeals"). Appellant signed her affidavit on July 29, 1999, which is more than 60 days after the date of Judge Reeh's order. Appellant then mailed her affidavit to the Superintendent. As noted above, the Superintendent forwarded the affidavit to Judge Reeh, who forwarded it to the Board. The Board received the affidavit on September 15, 1999, which is considerably more than 60 days after May 19, 1999.

The Board has consistently held that an appellant fails to file a timely notice of appeal when that person is given proper appeal information, but chooses to file an appeal with an official other than the Board, resulting in receipt of the appeal by the Board outside of the time for filing an appeal. See, e.g., Quileute Indian Tribe v. Portland Area Director, 34 IBIA 98 (1999); Charlie v. Navajo Area Director, 30 IBIA 302, recon. denied, 31 IBIA 35 (1997). Here, Appellant did not even begin her appeal timely since she signed her affidavit more than 60 days after the date of Judge Reeh's order.

The second reason for dismissal is that Appellant lacks standing because she is not a party in interest in Decedent's probate proceeding. 43 C.F.R. § 4.201(i) defines "parties in interest" as "any presumptive or actual heir, any beneficiary under a will, any party asserting a claim against a deceased Indian's estate, and any Tribe having a statutory option to purchase interests of a decedent." Appellant was not found to be an heir of Decedent and d oes not contend that she is in her affidavit. Neither does she assert any interest otherwise covered in section 4.201(i). Instead, she seeks to assert rights held by her children, who are actual heirs. The Board has previously held that a person who does not meet the definition of a party in interest under section 4.201(i) lacks standing to appeal from a probate decision. See Estate of Baz Nip Pah, 22 IBIA 72 (1992); Estate of Ethel Edith Wood Ring Janis, 15 IBIA 216 (1987).

It is possible that Appellant would have standing to appeal as guardian ad litem for her children if some or all of her children are minors. However, the record shows that Appellant's youngest child was born on November 12, 1976. Thus, none of Appellant's children are minors.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from Judge Reeh's May 19, 1999, order on rehearing is docketed but dismissed as untimely and for lack of standing.

_____	_____
Kathryn A. Lynn	Anita Vogt
Chief Administrative Judge	Administrative Judge